

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
EXELON MYSTIC, LLC,)	
)	
Defendant.)	
)	

CONSENT DECREE

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WHEREAS, Plaintiff, the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), has filed contemporaneously with the lodging of this Consent Decree a Complaint in this action against Defendant, Exelon Mystic, LLC ("Exelon Mystic"), alleging that Exelon Mystic committed various violations of the Clean Air Act ("CAA"), 42 U.S.C. § 7401 et seq., at the Mystic Station power plant, a utility owned and operated by Exelon Mystic in Everett, Massachusetts;

WHEREAS, the United States and Exelon Mystic (together, "the Parties") without the necessity of trial regarding any issue of fact or law, and without any admission of liability by Exelon Mystic, consent to entry of this Consent Decree;

WHEREAS, the Parties agree, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest; and,

THEREFORE, IT IS ADJUDGED, ORDERED AND DECREED AS FOLLOWS:

I. BACKGROUND

1. Exelon Mystic is a Delaware limited liability company doing business in Massachusetts. At all relevant times, Exelon Mystic or its predecessor, Sithe Mystic LLC, has owned and operated the Mystic Station power plant ("Mystic Station") in Everett, Massachusetts. At all relevant times, Mystic Station has included four electricity-generating units, known as Units 4, 5, 6 and 7, each with its own associated smokestack, from which Defendant has emitted pollutants, including visible air pollutants.

2. The Complaint alleges that Exelon Mystic violated the CAA, federal CAA regulations, and the Massachusetts State Implementation Plan ("SIP") at Mystic Station on at least 6,000 occasions from June 1998 through November 2003 by exceeding the plant's opacity limits. Opacity is a measure of smoke thickness: 0% opacity is a completely clear plume; 100% opacity is a completely black (or other color) plume that blocks out all light behind it. Opacity is regulated to prevent visible air pollutants, such as soot and other particulate matter, from polluting the air. Under the CAA and the Massachusetts SIP, Exelon Mystic is prohibited from causing visible smoke emissions from Mystic Station with 20% opacity or greater for more than six minutes per hour, and 40% opacity or greater at any time. The Complaint further alleges that Exelon Mystic violated monitoring, record-keeping and reporting requirements associated with its opacity limits. Finally, the Complaint alleges violation of EPA's Compliance Order issued to Defendant on March 4, 2002.

3. EPA, pursuant to Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), issued a Notice of Violation to Exelon Mystic's predecessor, Sithe Mystic LLC, on June 1, 2001 regarding the Massachusetts SIP opacity violations, and related opacity monitoring and reporting violations, alleged in the Complaint. The United States Department of Justice ("DOJ" or "Department of Justice"), pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), has notified the Massachusetts Department of Environmental Protection ("MA DEP") of the commencement of this action.

II. JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action and the Parties hereto pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331,

1345 and 1355. Venue properly lies in this Court pursuant to 42 U.S.C. § 7413(b), 28 U.S.C. §§ 1391(b) and (c), and 28 U.S.C. § 1395.

5. The Complaint states claims that constitute grounds for which relief could be granted pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b). Exelon Mystic waives any objections it may have to jurisdiction and venue regarding this action.

6. Until this Consent Decree is terminated, the Court shall retain jurisdiction over the Parties and this Consent Decree in order to enforce its terms and to take any other action necessary or appropriate to effectuate it. Exelon Mystic shall not challenge the Court's jurisdiction to enforce or otherwise effectuate this Consent Decree.

III. APPLICABILITY

7. The provisions of this Consent Decree shall apply to and be binding upon the United States, and upon Exelon Mystic, its officers, directors, employees, agents, successors and assigns. Any transfer of ownership or operation of Mystic Station Units 4, 5, 6 or 7 to any other person must be conditioned upon the transferee's agreement to undertake the obligations required by this Decree, as provided in a written agreement between Defendant and the proposed transferee, enforceable by the United States as third-party beneficiary of such agreement. At least thirty (30) days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to the Department of Justice and EPA as provided in Section XIII (Notices) below. Any attempt to transfer ownership or operation of Mystic Station Units 4, 5, 6 or 7 without complying with this Paragraph constitutes a violation of this Decree. No change in ownership, operation, or legal

status of Exelon Mystic, or transfer of ownership or operation of Mystic Station Units 4, 5, 6 or 7, shall release Exelon Mystic from its continued performance of all of its obligations under this Decree, including the obligations to perform the supplemental environmental projects set out in Section VII and in Appendices I through VI below.

8. Notwithstanding the provisions of Paragraph 7 above, Exelon Mystic may be released from some or all of its obligations solely under Section VI ("Compliance Requirements") provided that (i) Exelon Mystic and the transferee petition the United States in writing for approval of the transfer of the obligations and liabilities from Exelon Mystic to the transferee; (ii) the transferee's written agreement with Exelon Mystic specifically agrees to assume the obligations and liabilities of this Consent Decree; (iii) the transferee has the financial and technical ability to assume the obligations and liabilities provided by the Decree; and (iv) the United States, in its sole and unreviewable discretion, approves the transfer of the obligations and liability provided by the Decree.

9. Defendant shall provide a copy of this Consent Decree to all officers, directors, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any entities with whom Defendant contracts or otherwise agrees to perform work related to Section VII of the Decree, except that Defendant need not provide copies of this Decree to any entities who are retained solely to supply materials or equipment to satisfy requirements under the Decree. Defendant shall condition any such contract or agreement upon performance of the work in conformity with the terms of this Consent Decree.

10. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

IV. DEFINITIONS

11. Terms used in this Consent Decree that are defined in the CAA or in regulations promulgated pursuant to the CAA shall have the meanings assigned to them in the CAA or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

(a) "Complaint" shall mean the complaint filed by the United States in this action;

(b) "Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto;

(c) "Day" shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day;

(d) "Defendant" shall mean Exelon Mystic, LLC;

(e) "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States;

(f) "Paragraph" shall mean a portion of this Decree identified by an Arabic numeral;

(g) "Parties" shall mean the United States and the Defendant;

(h) "Section" shall mean a portion of this Decree identified by a Roman numeral; and

(i) "United States" shall mean the United States of America, acting on behalf of EPA.

V. CIVIL PENALTY

12. Exelon Mystic shall pay to the United States a civil penalty of \$1,000,000 within thirty (30) days after the date of entry of this Consent Decree.

13. Exelon Mystic shall pay the above-described civil penalty by electronic funds transfer in accordance with the written instructions to be provided by the United States. The cost of such electronic funds transfer shall be Exelon Mystic's responsibility. Within three (3) business days of payment, Exelon Mystic shall provide written notice of payment via facsimile and mail to EPA, Department of Justice, and the United States Attorney for the District of Massachusetts, pursuant to Section XIII (Notices) below. The written notice shall also contain a statement showing the calculation of any interest included in the payment.

14. If Exelon Mystic makes a late payment of any amount of the penalty, Exelon Mystic shall pay interest from the date upon which payment is required by Paragraph 12 on any late payment, a quarterly nonpayment penalty, and any governmental enforcement expenses incurred to collect the late payment, all in accordance with Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5).

15. Exelon Mystic agrees to treat all payments made pursuant to this Section as civil penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f),

and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction for Exelon Mystic, or any of its corporate affiliates, under federal, state or local law.

VI. COMPLIANCE REQUIREMENTS

16. Exelon Mystic shall comply at all times at Mystic Station Units 4, 5, 6 and 7 with the opacity limits, and associated opacity monitoring, recordkeeping and reporting requirements, arising from Sections 110 and 412 of the CAA, 42 U.S.C. §§ 7410 and 7651k, and the Massachusetts SIP, and set out in 40 C.F.R. Part 51, Appendix P, 40 C.F.R. Part 60, Appendix B, Performance Specification 1, 40 C.F.R. Part 75, and the SIP-approved versions of 310 Code of Massachusetts Regulations 7.06 and 7.14.

VII. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

17. Exelon Mystic shall perform and satisfactorily complete five supplemental environmental projects ("SEPs"). Each of these SEPs will be performed in the Boston metropolitan area, and each is intended to reduce any adverse impact or risk to public health or the environment to which Mystic Station's opacity violations may have contributed. Exelon Mystic shall perform these SEPs in accordance with the terms and schedules set out in Appendices I through VI to this Consent Decree. These Appendices are incorporated in this Consent Decree and are fully enforceable therein.

VIII. STIPULATED PENALTIES

18. Except as otherwise provided in this Section and in Appendix I, if Exelon Mystic violates any provision of this Consent Decree, Exelon Mystic shall be liable for stipulated penalties as follows:

<u>Period of Failure To Comply</u>	<u>Penalty Per Violation Per Day</u>
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1st through 15th day	\$ 500
16th through 30th day	\$ 1,000
31st day and beyond	\$ 2,500

19. Except as otherwise provided in Paragraph 8 above, if Exelon Mystic violates the opacity limits set out in the Massachusetts SIP at Mystic Station Unit 4, 5, 6 or 7 during any calendar month, Exelon Mystic shall be liable for stipulated penalties for that calendar month as follows:

<u>Period of Violation</u>	<u>Penalty Per Minute Of Violation(s) at Each Unit</u>
--------------------------------	--

1st through 5th minute	\$ 250
6 th through 10th minute	\$ 500
11 th minute and beyond	\$ 1,000

These stipulated penalties replace, for the above-described opacity violations only, the general stipulated penalties set out in Paragraph 18. Nothing in this Paragraph or Section shall limit in any way the rights of the United States and EPA to seek judicial or administrative penalties and injunctive remedies regarding any opacity violations that occur at Mystic Station Units 4, 5, 6 or 7 after the date of lodging of this Consent Decree.

20. Stipulated penalties arising under Paragraph 18 shall begin to accrue on the day that the violation of this Consent Decree first occurs, and shall continue to accrue for each day until the day upon which the violation is fully corrected. Stipulated penalties arising under Paragraph 19 shall begin to accrue at the minute when the opacity violation first occurs, and shall continue to accrue for each minute until the violation is fully corrected. Separate stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree or of opacity

limits. Stipulated penalties shall accrue regardless of whether the United States has notified Exelon Mystic that a violation of this Consent Decree or opacity limits has occurred.

21. Stipulated penalties shall become due and owing, and shall be paid by Exelon Mystic, not later than thirty (30) days after the United States issues Exelon Mystic a written demand for them. If any such demanded stipulated penalties are not paid in full when due, Exelon Mystic shall pay the unpaid penalties and interest thereon. Such interest shall accrue from the date the penalties were due, and shall be calculated in accordance with 28 U.S.C. § 1961.

22. The United States, in an unreviewable exercise of its discretion, may reduce or waive stipulated penalties otherwise due it under this Consent Decree.

23. Exelon Mystic shall pay the full amount of any stipulated penalties due (including all accrued interest) by electronic funds transfer in accordance with the written instructions to be provided by the United States, or by certified check payable to the "U.S. Department of Justice," referencing DOJ No. 90-5-2-1-07948 and the United States Attorney's Office file number _____, and delivered by overnight or certified mail to the Office of the United States Attorney for the District of Massachusetts. Exelon Mystic shall bear the cost of such transfer. At the time of payment, Defendant shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference DOJ No. 90-5-2-1-07948 and the civil action number of this case) to the Department of Justice, EPA, and the United States Attorney for the District of Massachusetts, as provided in Section XIII (Notices) below. The written notice shall also contain a statement showing the calculation of any interest included in the payment.

24. Exelon Mystic agrees to treat all payments made pursuant to this Section as civil penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction for Exelon Mystic, or any of its corporate affiliates, under federal, state or local law.

25. Stipulated penalties shall continue to accrue as provided in Paragraph 20 above during any dispute resolution, with interest on accrued penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

(a) If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within thirty (30) days of the effective date of the agreement or the receipt of EPA's decision or order;

(b) If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within sixty (60) days of receiving the Court's decision or order, except as provided in Subparagraph (c), below;

(c) If any party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) days of receiving the final appellate court decision.

26. If the United States must bring an action to collect any portion of the civil penalty or any stipulated penalties that Exelon Mystic is required to pay pursuant to this Consent Decree, Exelon Mystic shall reimburse the United States for all interest, enforcement expenses (including

but not limited to costs and attorneys fees), and additional penalties related to such collection action, in accordance with Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5).

27. The stipulated penalty provisions of this Section shall be in addition to all other rights reserved by the United States pursuant to Section XI below. Nothing in this Stipulated Penalties Section shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek other remedies or sanctions available by virtue of any violation by Exelon Mystic of this Consent Decree or of the statutes, regulations or permits referenced within it.

IX. FORCE MAJEURE

28. A “force majeure event” is any event beyond the control of Defendant, its contractors and/or agents, or any entity controlled by Defendant, that delays or prevents the performance of any obligation under this Consent Decree despite Defendant’s best efforts to fulfill the obligation. “Best efforts” includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring, and (b) after it has occurred, to prevent or minimize any resulting delay or failure to perform to the greatest extent possible. “Force majeure” does not include Defendant’s financial inability to perform any obligation under this Consent Decree.

29. Defendant shall provide written notice to EPA as soon as possible, but not later than seven (7) days after the time Defendant first knew of, or by the exercise of due diligence, should have known of, a claimed force majeure event. The notice shall describe the expected delay or failure to perform; the causes of the delay or failure to perform; Defendant’s past and proposed actions to prevent or minimize any delay or failure to perform; a schedule for carrying

out those actions; and Defendant's rationale for attributing any delay or failure to perform to a force majeure event. Failure to provide notice as required by this Paragraph shall preclude Defendant from asserting any claim of force majeure.

30. If the United States agrees that a force majeure event has occurred, the United States and Defendant may agree in writing to extend the time for Defendant to perform the obligation for the time necessary to complete it. Stipulated penalties shall not accrue with respect to such obligation during the extension provided by the United States for performance. An extension of time to perform the obligation affected by a force majeure event shall not, by itself, extend the time to perform any other obligation under this Consent Decree.

31. If the United States does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by Defendant, then the United States' position shall be binding, unless Defendant invokes dispute resolution under Section X below. In any such dispute, Defendant bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event as defined in this Section; that Defendant gave the notice required by Paragraph 29; that the force majeure event caused any delay or failure to perform that Defendant claims was attributable to that event; and that Defendant exercised best efforts to prevent or minimize any delay caused by the event.

X. DISPUTE RESOLUTION

32. Any dispute that arises under or with respect to this Consent Decree shall first be the subject of informal negotiations. Defendant shall provide written notice to EPA describing the nature of the dispute and requesting informal negotiations to resolve it. Defendant's notice shall also include any supporting factual data, analysis, opinion, or documentation to support its

position in the dispute. The period of informal negotiations shall not exceed twenty (20) days beyond the date that EPA receives Defendant's written notice, and in no event shall extend more than thirty (30) days beyond the date on which the dispute arose, unless EPA and Defendant agree in writing to a longer period. EPA and Defendant may agree to mediation of the dispute during the informal negotiations period.

33. If EPA and Defendant cannot resolve a dispute by informal negotiations, EPA will issue a written decision regarding the dispute and this decision shall be considered binding unless Defendant files with this Court, and simultaneously serves upon the Department of Justice and EPA, a motion for review of the EPA decision within thirty (30) days after the issuance of EPA's written decision. Defendant's motion shall contain all supporting factual data, analysis, opinion, and documentation upon which Defendant relies, and shall describe the history of the matter in dispute and the relief requested. Defendant's motion to the Court may not raise new issues or submit new facts that were not presented to EPA during the thirty (30) day informal negotiations period. The United States may file a response to any issues raised in the Defendant's motion within sixty (60) days following service of Defendant's motion. In any judicial proceeding pursuant to this Paragraph, Defendant shall bear the burden of demonstrating that its position clearly complies with this Consent Decree and the CAA and that Defendant is entitled to relief under applicable law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

34. The invocation of dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree

which is not directly in dispute, unless the United States or the Court agrees otherwise.

Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute. In the event that Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII above.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

35. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action, and any additional opacity violations committed by Exelon Mystic at Mystic Station Units 4, 5, 6 and 7, through the date of lodging of the Decree.

36. Except as expressly provided in this Section, this Consent Decree shall not be construed to prevent or limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions. This Consent Decree in no way releases Exelon Mystic or any other party from any criminal liability that may arise from any facts, circumstances or law involved in any way in this or any civil judicial action.

37. Defendant is responsible for achieving and maintaining complete compliance with the Clean Air Act and its implementing regulations, including any CAA permits that Defendant holds from EPA or MA DEP, and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to said laws, regulations, or permits. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. The United States does not, by its consent to the entry of this Consent Decree,

warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 42 U.S.C. § 7401 et seq.

38. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties not party to the Decree, nor does it limit the rights of third parties not party to the Decree against Defendant, except as otherwise provided by law.

39. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to the Decree.

40. Except as expressly provided in this Consent Decree, the United States reserves all legal and equitable remedies available to enforce the provisions of the Decree.

XII. COSTS

41. Except as described in Sections V (Civil Penalties) and VIII (Stipulated Penalties), each party shall bear its own costs, disbursements and attorney's fees in this action, and specifically waives any right to recover such costs, disbursements or attorneys fees from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law.

XIII. NOTICES

42. Whenever under the terms of this Consent Decree written notice is required to be given or written information is required to be sent to EPA, the Department of Justice, the United States Attorney for the District of Massachusetts, or Exelon Mystic, the notice or information shall be mailed via overnight or certified mail to the individuals and addresses specified below, unless any such individual or such individual's successor gives notice in writing to the other party that notice should be mailed to a different individual or to a different address, or unless this Consent Decree specifically provides otherwise.

As to the Department of Justice:

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044
DOJ No. 90-5-2-1-07948
Attn: Elise S. Feldman

As to EPA:

Director
Office of Environmental Stewardship
U. S. Environmental Protection Agency
Suite 1100 (Mailcode SAA)
One Congress Street
Boston, Massachusetts 02114-2023
Attn: Steven J. Viggiani

As to Exelon Mystic:

Mark A. Schiavoni
Vice President
Exelon Mystic, LLC
The Schrafft Center
529 Main Street, Suite 605
Charlestown, Massachusetts 02129

and

John P. Proctor
Winston & Strawn LLP
1400 L Street, NW
Washington, D.C. 20005

As to the United States Attorney, District of Massachusetts:

George Bunker Henderson, II
Assistant United States Attorney
U.S. Courthouse, Suite 9200
1 Courthouse Way
Boston, Massachusetts 02210

43. Whenever written notice is required to be sent by facsimile transmission, the notice should be sent to the entities or individuals set out in Paragraph 42 above, using the following facsimile telephone numbers: for the Department of Justice, (202) 616-2427; for EPA, (617) 918-1809; for Exelon Mystic, (617) 381-2211 (Schiavoni) and (202) 371-5950 (Proctor), and for the United States Attorney for the District of Massachusetts, (617) 748-3969. These numbers are furnished for the convenience of the Parties; it remains the responsibility of any party sending a facsimile to ensure that the relevant facsimile number is correct, and that the facsimile was fully transmitted and received.

44. All notices, reports and other written submissions required by this Consent Decree to be sent by Exelon Mystic to EPA and/or the Department of Justice (including but not limited to the SEP certification of completions required by Appendix I below) shall contain the following certification:

I certify that the information contained in or accompanying this submission is true, accurate and complete. As to any marked and identified portions of the submission for which I cannot personally verify truth and accuracy, I certify, as the company official having supervisory responsibility for the person(s) who verified those portions, that the information contained therein is true, accurate and complete.

45. Exelon Mystic shall ensure that such certified statement is signed by a responsible corporate officer, i.e., a president, vice-president, secretary, treasurer, or other person responsible for a principal business function, or a senior manager responsible for environmental policy-making and decision-making.

46. Any party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

47. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIV. EFFECTIVE AND TERMINATION DATES

48. This Consent Decree shall be effective upon the date of its entry by the Court.

49. After Defendant has maintained compliance with this Consent Decree for a period of five (5) years after the effective date of the Decree, has complied with all other requirements of the Decree, including those relating to the SEPs pursuant to Section VII above, and has paid the civil penalty and any accrued stipulated penalties as required by the Decree, Defendant may serve upon the United States a request for termination, stating that Defendant has satisfied all of the above requirements, together with all necessary supporting documentation.

50. Following receipt by the United States of Defendant's request for termination, the Parties shall confer informally concerning the request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

51. If the United States does not agree that the Decree may be terminated, Defendant may invoke dispute resolution under Section X above. However, Defendant shall not seek such dispute resolution until sixty (60) days after service of its request for termination.

XV. MODIFICATION

52. Any material modification of this Consent Decree must be agreed to by the Parties, set out in writing, and approved by the Court. Material modifications shall become effective upon approval by the Court.

53. Any non-material modifications of this Consent Decree must be agreed to by the Parties and set out in writing.

XVI. PUBLIC PARTICIPATION

54. The Consent Decree is lodged with the Court subject to the requirements of 28 C.F.R. § 50.7, which provides for publication of a notice of this proposed Consent Decree in the Federal Register and an opportunity for the public to comment. The public has thirty (30) days from the date of publication in the Federal Register to comment on the settlement. All written comments received, along with any responses to them, shall be provided to the Court prior to entry. The United States reserves the right to withdraw or withhold its consent to entry if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper or inadequate. Exelon Mystic consents to the entry of this Consent Decree without further notice, proceedings or consent.

XVII. SIGNATORIES/SERVICE

55. Each party certifies that at least one of their undersigned representatives is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

56. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

57. Defendant agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

58. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court including, but not limited to, service of a summons.

XVIII. INTEGRATION/APPENDICES

59. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersede all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than the Appendices, which are attached to and incorporated in this Decree, and any documents that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XIX. FINAL JUDGMENT

60. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant.

XX. APPENDICES

61. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix I” is the General Provisions for Mystic SEPs

“Appendix II” is the School Bus Retrofit SEP;

“Appendix III” is the Commuter Rail Retrofit SEP;

“Appendix IV” is the Dam Bikepath SEP;

“Appendix V” is the Mill Creek SEP; and

“Appendix VI” is the Malden River Study SEP.

JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE FOREGOING
CONSENT DECREE THIS ____ DAY OF _____, 2004.

UNITED STATES DISTRICT JUDGE

UNITED STATES v. EXELON MYSTIC, LLC CONSENT DECREE

FOR PLAINTIFF THE UNITED STATES OF AMERICA:

Thomas L. Sansonetti
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

1/8/04

DATE

Elise S. Feldman
Trial Attorney B.B.O. 563187
Peter M. Flynn
Senior Attorney
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044

1/15/04

DATE

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United States Attorney
District of Massachusetts

George Bunker Henderson, II
Assistant United States Attorney
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1 Courthouse Way
Boston, Massachusetts 02210

UNITED STATES v. EXELON MYSTIC, LLC CONSENT DECREE

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Robert W. Varney
Regional Administrator
U.S. Environmental Protection Agency
Region I -- New England
One Congress Street (Mailcode RAA)
Boston, Massachusetts 02114

12/23/03
DATE

Stephen S. Perkins
Director
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One Congress Street (Mailcode SAA)
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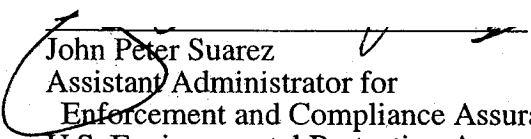
12/22/03
DATE

Steven J. Viggiani
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One Congress Street (Mailcode SEL)
Boston, Massachusetts 02114

12/22/03
DATE

UNITED STATES v. EXELON MYSTIC, LLC CONSENT DECREE

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:


John Peter Suarez
Assistant Administrator for
Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (Mailcode 2201A)
Washington, D.C. 20460

DATE

1/13/04

UNITED STATES v. EXELON MYSTIC, LLC CONSENT DECREE

FOR DEFENDANT EXELON MYSTIC, LLC:

Mark A. Schiavoni
Vice President
Exelon Mystic, LLC

12/18/03
DATE

APPENDIX I – GENERAL PROVISIONS FOR MYSTIC SEPS

1. Exelon Mystic shall perform and satisfactorily complete five supplemental environmental projects (“SEPs”). These SEPs – the School Bus Retrofit SEP, the Commuter Rail Retrofit SEP, the Dam Bikepath SEP, the Mill Creek SEP, and the Malden River Study SEP – are described in detail in Appendices II through VI below.

2. Exelon Mystic’s “performance and satisfactory completion” of each SEP shall mean that Exelon Mystic shall perform or ensure the performance of the SEP in accordance with the terms and schedules set out in the Appendices below, and shall spend not less than the funding amounts set out therein. In so doing, Exelon Mystic may employ or work with contractors, consultants, state and local authorities, or other entities, as appropriate.

3. As part of its SEP performance, Exelon Mystic shall spend funds on the SEPs as specified in the expenditure schedules set out in Appendices II through VI below. Unless otherwise provided below, if Exelon Mystic does not spend the full amount of funding designated for a SEP’s implementation by a specified expenditure date, Exelon Mystic shall, by no later than the expenditure date, (a) establish an interest-bearing escrow account acceptable to EPA, and (b) deposit the unexpended funds in the account. Such deposited funds and any accrued interest shall be spent as soon as practicable on the subsequent implementation of the SEPs, or as provided in Paragraphs 4 and 5 below.

4. If a force majeure event prevents Exelon Mystic from performing and satisfactorily completing a SEP without expending all of the funds designated for the SEP’s implementation in Appendices II through VI below, Exelon Mystic shall so notify EPA in accordance with Section IX above. Upon EPA’s agreement that the SEP cannot be satisfactorily completed, Exelon Mystic shall halt work on the SEP, compute the amount of any funds designated for the SEP that have not been spent, and direct, with EPA’s approval, such funds to another of the SEPs described in this Consent Decree.

5. If Exelon Mystic should perform and satisfactorily complete a SEP without expending all of the funds designated for the SEP's implementation in Appendices II through VI, Exelon Mystic shall so notify EPA in the SEP Completion Report (required by Paragraph 7 below) and state the amount of remaining unexpended funds. Upon EPA's agreement that the SEP has been satisfactorily completed, Exelon Mystic shall direct, with EPA's approval, such funds to another of the SEPs described in this Consent Decree.

6. No later than September 15, 2004, Exelon Mystic shall submit an Interim SEPs Report to EPA. The Interim SEPs Report shall contain

- (a) a narrative description of the activities undertaken on each SEP to date;
- (b) an itemization, with copies of supporting documentation, of the costs expended on each SEP (including the expenditure dates) and/or of the deposits made to any escrow account established for the SEP; and
- (c) an explanation of any difficulties or delays in the implementation of the SEPs.

Exelon shall continue to submit Interim SEPs Reports to EPA no later than by March 15th and September 15th of each year until all SEPs are certified complete or September 15, 2008, whichever is later.

7. Within sixty (60) days after the completion of each SEP, Exelon Mystic shall submit a separate SEP Completion Report to EPA. The SEP Completion Reports shall contain the following information:

- (a) a description of the SEP as implemented, including the dates during which the project was implemented;
- (b) itemized costs, documented by copies of purchase orders and receipts or canceled checks;
- (c) a certification of completion stating that the SEP has been performed and satisfactorily completed pursuant to the provisions of this Consent Decree; and

(d) a description of the environmental and public health benefits resulting from implementation of the SEP.

To satisfy Paragraph 7(d) above, Exelon Mystic is not required to employ consultants or other agents solely to quantify environmental and health benefits, but may use relevant data generated during the SEP's implementation.

8. Following receipt of each SEP Completion Report, EPA will do one of the following:

(a) provide written notice that it accepts the SEP Completion Report;

(b) reject the SEP Completion Report and provide written notice to Exelon Mystic of any deficiencies, and grant Exelon Mystic an additional thirty (30) days, or such other time as EPA may in its sole and unreviewable discretion conclude is reasonable, in which to correct any deficiencies; or

(c) reject the SEP Completion Report and provide written notice to Exelon Mystic of its failure to satisfactorily complete the SEP in accordance with the requirements of this Decree, and seek stipulated penalties as specified below.

Exelon Mystic may invoke the procedures set forth in Section X above to dispute EPA's determination the SEP was not satisfactorily completed in accordance with the requirements of this Decree.

9. Stipulated Penalties. If Exelon Mystic should fail to perform or satisfactorily complete any of the SEPs, the following stipulated penalties shall apply:

(a) Except as provided in Paragraphs 4 and 5 above, if Exelon Mystic fails to satisfactorily complete any of the SEPs, Exelon Mystic shall be liable for stipulated penalties as follows: for the School Bus Retrofit SEP, \$3,254,496; for the Commuter Rail Retrofit SEP, \$1,256,289; for the Dam Bikepath SEP, \$250,000; for the Mill Creek SEP, \$250,000; and for the Malden River Study SEP, \$118,600.

(b) If Exelon Mystic fails to either (i) spend all of the funds designated to be spent on a SEP's implementation by a specified expenditure date or (ii) deposit, by that same date, the unspent funds in an interest-bearing escrow account acceptable to EPA, Exelon Mystic shall be liable for stipulated penalties for each day of each such failure in accordance with Paragraph 18 of Section VIII above.

(c) If Exelon Mystic fails to meet any of a SEP's "critical milestones" by the deadlines set out in the Appendices below, Exelon Mystic shall be liable for stipulated penalties for each day of each such failure in accordance with Paragraph 18 of Section VIII above.

(d) If Exelon Mystic fails to timely submit any of its Interim SEPs Reports or SEP Completion Reports, Exelon Mystic shall be liable for stipulated penalties for each day of each such failure in accordance with Paragraph 18 of Section VIII above.

The penalties described above shall be the sole stipulated penalties applicable to Exelon Mystic's performance and completion of the SEPs. Separate stipulated penalties under this Paragraph may accrue simultaneously for each separate type of violation described above. Stipulated penalties arising under this Paragraph shall be paid in accordance with the terms of Section VIII above.

10. By entering into this Consent Decree, Exelon Mystic certifies that it is not required to develop or perform the SEPs by any federal, state, or local law or regulation; nor is Exelon Mystic required to perform or develop the SEPs as part of an existing settlement or order in another legal action, or as injunctive relief in this or any other judicial or administrative case or action. Exelon Mystic further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEPs.

11. Exelon Mystic hereby agrees that any public oral or written statement making reference to the SEPs shall include the following language: "This project was undertaken as part of the settlement of an federal enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Clean Air Act."

12. Exelon Mystic agrees to indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives, from any and all claims or causes of action:

(a) arising from, or on account of, acts or omissions of Exelon Mystic, Exelon Mystic's officers, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, relating to the SEPs; and

(b) for damages or reimbursement arising from, or on account of, any contract, agreement, or arrangement between Exelon Mystic and any persons or entities for performance of work on or relating to the SEPs.

13. Until the termination of this Decree, Exelon Mystic shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA regarding any of the SEPs, and Exelon Mystic shall provide the documentation of any such underlying research and data to EPA within seven (7) days of a request for such information.

14. For all certifications that Exelon Mystic is required to make under this Appendix and Paragraph 44 of this Consent Decree relating to the performance and completion of the SEPs, Exelon Mystic may place reasonable reliance on the accuracy of reports or other information provided to it by state or local authorities, or entities under contract with Exelon Mystic or such authorities to implement the SEPs.

APPENDIX II – SCHOOL BUS RETROFIT SEP

1. The School Bus Retrofit SEP will equip currently operating diesel school buses in the Boston metropolitan area with particulate matter filters and supply the buses with ultra-low sulfur diesel fuel (“ULSD”), i.e., diesel fuel with a sulfur content of less than 30 parts per million (“ppm”), and 15 ppm or less if available, in order to reduce particulate matter and other harmful air pollutants from diesel bus engine exhaust. Unless otherwise provided pursuant to Appendix I, Exelon Mystic shall spend to implement this SEP a total of \$3,254,496 to retrofit and supply ULSD to as many diesel school buses as possible. To supply the ULSD, Exelon Mystic shall pay any increased cost differential between the retrofitted buses’ current diesel fuel and ULSD. The SEP shall be completed by June 2006, or at another time mutually agreed upon by Exelon Mystic and EPA.

2. The School Bus Retrofit SEP shall be implemented in the Boston metropolitan area. In order to provide the greatest long-term benefits under this retrofit program, the SEP shall also give preference for retrofitting buses which by law are operated solely in the Boston metropolitan area, rather than buses that can be leased or otherwise moved outside the Boston area. The retrofits shall be performed using only demonstrated retrofit technologies and equipment; in no event shall SEP funds be used for research and/or investigation of new or undemonstrated retrofit technologies and/or applications.

3. Work Schedule. The SEP shall be performed on the following schedule:

(a) By March 15, 2004, or within ten (10) days of final entry of this Consent Decree, whichever is later, Exelon Mystic shall provide written notice to EPA which (i) states the school district in which the SEP will be implemented; (ii) identifies the school buses and related child-transport vehicles (together, “buses”) to be retrofitted under the SEP; (iii) identifies the bus yard(s) where these buses are garaged and fueled; (iv) provides a schedule for the contracting, purchase and supply of ULSD to these bus yards; and (v) provides a schedule for the contracting and purchase of the retrofit particulate

traps, and for the installation of the traps on the buses in accordance with Paragraph 3(c) below.

(b) By no later than June 1, 2004, ULSD shall be purchased and initially supplied to the bus yard(s) identified in Paragraph 3(a) above. The amount of ULSD supplied shall be sufficient to fuel all of the buses operating from the bus yard(s), including any buses and related child-transport vehicles that will not be retrofitted with particulate traps. SEP funds shall pay the increased cost differential between the price of ULSD and the price of the buses and related vehicles' current diesel fuel, and may also pay any necessary increased delivery costs. ULSD shall continue to be purchased and supplied to these bus yard(s) during the entire 2004-05 and 2005-06 school years, through June 30, 2006. Nothing in this Paragraph shall obligate Exelon Mystic to make payments for ULSD prior to June 1, 2004.

(c) By no later than August 31, 2004, the retrofitting of the buses identified in Paragraph 3(a) shall commence. The retrofits shall be performed as quickly as possible on a schedule that is most protective of affected sensitive populations, e.g., the bus-riding children and the residents of environmental justice neighborhoods through which the buses travel. Nothing in this Paragraph shall obligate Exelon Mystic to make payments for the traps prior to June 1, 2004.

(d) By no later than August 31, 2005, the retrofitting of all of the buses identified in Paragraph 3(a) shall be completed.

4. Expenditure Schedule. Unless otherwise provided pursuant to Appendix I, Exelon Mystic shall expend, by no later than June 1, 2004, a total of \$3,048,998 to implement this SEP. By no later than June 1, 2005, Exelon Mystic shall expend an additional \$205,498 on this SEP. These expenditures shall be made in accordance with Paragraph 3 of Appendix I above.

5. Critical Milestones. The following are critical milestones for this SEP:

(a) By no later than June 1, 2004, ULSD shall be purchased and initially supplied to the bus yard(s) identified in Paragraph 3(a) above; and

(b) By no later than August 31, 2005, all of the buses identified to be retrofitted in Paragraph 3(a) above shall be retrofitted with particulate traps.

APPENDIX III – COMMUTER RAIL RETROFIT SEP

1. The Commuter Rail Retrofit SEP will equip commuter rail trains operating out of Boston's North Station rail terminal with oxidation catalysts and supply the trains with low-sulfur diesel fuel. The Commuter Rail Retrofit SEP is designed to reduce particulate matter and other harmful air pollutants in the greater Boston metropolitan area from diesel locomotive exhaust. Unless otherwise provided pursuant to Appendix I, Exelon Mystic shall spend to implement this SEP a total of \$1,256,289 to retrofit and supply low-sulfur fuel for as many commuter locomotives operating out of North Station as possible. The SEP shall be completed by June 1, 2007, or at another time mutually agreed upon by Exelon Mystic and EPA.

2. Based on current estimates regarding retrofitting and fuel costs, the Parties expect that this SEP will retrofit approximately 22 commuter rail locomotives operating out of North Station – specifically, the approximately 15 locomotives that operate exclusively from North Station, and approximately 7 locomotives that “swing” between North Station and South Station. The SEP will also supply low-sulfur diesel fuel, i.e., diesel fuel with a sulfur content of no more than 500 ppm, by paying the cost differential between these locomotives' current non-road diesel fuel and low-sulfur diesel fuel, at North Station from June 2004 to June 2007. On June 1, 2007, the use of low-sulfur diesel fuel in locomotives is expected to become mandatory under EPA's recently proposed off-road diesel fuel rule (“Off-Road Fuel Rule”).

3. Due to the innovative nature of this project, the Parties recognize that, despite Exelon Mystic's best efforts, it is possible that the proposed oxidation catalysts may not function as intended using the proposed low-sulfur fuel. If substantial technical problems with the catalysts should arise that prevent the completion of the SEP within its budget and schedules, Exelon Mystic shall proceed in accordance with Paragraph 4 of Appendix I above, except that, if the June 1, 2007 deadline for the locomotives' mandatory switch to low-sulfur diesel fuel set out in the proposed Off-Road Fuel Rule is delayed, Exelon Mystic and the MBTA may decide, with EPA's approval, to apply any unexpended retrofit funds to the continued supply of low-sulfur

diesel fuel for the commuter locomotives. Nothing in this Paragraph shall obligate Exelon Mystic to spend more than the unexpended retrofit funds in order to continue the low-sulfur fuel supply, and in no event shall Exelon Mystic continue such supply past the date that the locomotives' use of low-sulfur diesel fuel becomes mandatory under the final Off-Road Fuel Rule or any other federal or state regulation.

4. Work Schedule. The SEP shall be performed on the following schedule:

(a) By no later than July 1, 2004, low-sulfur fuel shall be purchased and initially supplied to the North Station rail terminal. The amount of low-sulfur fuel supplied shall be sufficient to fuel all of the commuter rail locomotives operating from North Station (total fuel estimate, approximately 4,415,255 gallons/year) and shall continue to be supplied from July 1, 2004 to at least June 1, 2007. SEP funds will pay for the cost differential between the price of low-sulfur diesel fuel and the price of the locomotives' current off-road diesel fuel. Nothing in this Paragraph shall obligate Exelon Mystic to spend more than \$220,763 per year (or more than \$662,289 over three years) to supply low-sulfur diesel fuel, or to make payments for such fuel prior to June 1, 2004.

(b) By no later than August 31, 2005, the commuter rail locomotives identified in Paragraph 2 above shall be retrofitted with oxidation catalysts. Nothing in this Paragraph shall obligate Exelon Mystic to spend more than \$594,000 on the retrofits, or to make payments for the retrofits prior to June 1, 2004.

5. Expenditure Schedule. Unless otherwise provided pursuant to Appendix I, Exelon Mystic shall expend, by no later than June 1, 2004, a total of \$814,763 to implement this SEP. By no later than June 1, 2005, Exelon Mystic shall likewise expend an additional \$220,763 on this SEP, and by no later than June 1, 2006, Exelon Mystic shall likewise expend another \$220,763. These expenditures shall be made in accordance with Paragraph 3 of Appendix I above.

6. Critical Milestones. The following are critical milestones for this SEP:

(a) By no later than July 1, 2004, low-sulfur diesel fuel shall be purchased and initially supplied to the North Station rail terminal; and

(b) By no later than August 31, 2005, all of the commuter rail locomotives identified in Paragraph 2 above shall be retrofitted with oxidation catalysts.

APPENDIX IV – DAM BIKEPATH SEP

1. The Dam Bikepath SEP will create a bikepath link across the Mystic River at the Amelia Earhart Dam, thereby encouraging bike traffic on the Boston metropolitan area's existing and planned bikepaths and reducing air pollutants from automobile exhaust. Unless otherwise provided pursuant to Appendix I, Exelon Mystic shall spend to implement this SEP a total of \$250,000 to design and construct a commuter bikepath crossing the Amelia Earhart Dam, and to help design and construct a commuter bike path on land adjacent to the MBTA's Charlestown bus yard or at other metropolitan locations. The SEP shall be completed as quickly as practicable but by no later than June 1, 2006, or at another time mutually agreed upon by Exelon Mystic and EPA.

2. Based on current estimates regarding design and construction costs, the Parties expect that most of the SEP's funds will be needed to design and construct the Amelia Earhart Dam bikepath, with some funds (budget target, at least \$25,000) available to help design and construct as much of the Charlestown bus yard bikepath as possible. Should these estimates prove high, or for any other reason funds remain available after the two bikepaths are constructed, the SEP may fund additional design and/or construction of bikepaths with current or planned connections to the Amelia Earhart Dam and Charlestown bikepaths.

3. Work Schedule. The SEP shall be performed on the following schedule:

(a) By no later than June 1, 2004, any necessary design work for the two bikepaths identified above shall commence.

(b) By no later than June 1, 2005, any necessary design work for the Amelia Earhart Dam bikepath shall be completed.

(c) By no later than June 1, 2006, construction on the Amelia Earhart Dam bikepath shall be completed, and the bikepath shall be opened to the public.

4. Expenditure Schedule. Unless otherwise provided pursuant to Appendix I, Exelon Mystic shall expend, by no later than June 1, 2004, a total of \$250,000 to implement this SEP. These expenditures shall be made in accordance with Paragraph 3 of Appendix I above.

5. Critical Milestones. The following are critical milestones for this SEP:

(a) By no later than June 1, 2004, any necessary design work for the two bikepaths shall be commenced.

(b) By no later than June 1, 2006, construction on the Amelia Earhart Dam bikepath shall be completed, and the bikepath shall be opened to the public.

APPENDIX V – MILL CREEK SEP

1. The Mill Creek SEP will restore and protect a saltmarsh ecosystem along the Mill Creek in Chelsea, Massachusetts. The specific site to be restored will be adjacent to the Parkway Plaza site in Chelsea or at another downstream location on Mill Creek. The SEP will restore and protect this site as a natural saltmarsh and upland ecosystem, providing environmental benefits and wildlife habitat as well as needed coastal access, passive recreation and environmental opportunities to the residents of Chelsea and surrounding communities, including many persons living in environmental justice neighborhoods. Unless otherwise provided pursuant to Appendix I, Exelon Mystic shall spend to implement this SEP a total of \$250,000 on identification, permitting and restoration of as much of the site as possible, with concurrent and follow-up oversight and educational activities.

2. Based on current estimates regarding design and construction costs, the Parties expect that approximately 80% of this SEP's funding will be directed toward site identification, permitting, restoration work, and pre-and post-restoration monitoring, while approximately 20% will be used for coordination of the project, educational components, and public access through boardwalks or other similar means. The approximate SEP budget targets are as follows: \$38,000 for site delineation, assessment and permitting; \$150,000 for restoration work (site preparation, earthwork, planting, etc.); \$12,000 for pre- and post-restoration monitoring; \$10,000 for public access through boardwalks or similar means, with educational signage; and \$40,000 (\$10,000 per year for four years) for project coordination and special educational events.

3. Work Schedule. The SEP shall be performed on the following schedule:

(a) Year 1 (June 2004 to June 2005). Any necessary site delineation and/or assessment activities shall be performed, and any necessary permits shall be applied for.

(b) Year 2 (June 2005 to June 2006). All necessary permits shall be obtained, and restoration work shall commence.

(c) Year 3 (June 2006 to June 2007). Restoration and public access work shall be completed, and post-restoration monitoring shall commence.

(d) Year 4 (June 2007 to June 2008). Post-restoration monitoring shall continue.

In addition, coordination, oversight and educational activities related to the project shall be performed during each of these four years.

4. Expenditure Schedule. Unless otherwise provided pursuant to Appendix I, Exelon Mystic shall expend, in accordance with Paragraph 3 of Appendix I above, a total of \$250,000 to implement this SEP. Specific expenditures shall be made as follows: by no later than June 1, 2004, Exelon Mystic shall expend \$51,000; by June 1, 2005, an additional \$173,000; by June 1, 2006, an additional \$13,000; and by June 1, 2007, an additional \$13,000.

5. Critical Milestones. The following are critical milestones for this SEP:

(a) By no later than the end of Year 1, all necessary permits shall be applied for.

(b) By no later than the end of Year 3, all restoration and public access work shall be completed.

APPENDIX VI – MALDEN RIVER STUDY SEP

1. The Malden River Study SEP will fund a feasibility study and environmental assessment (“Study”) for the Malden River. The Study’s goal is to determine feasible restoration activities that will restore the Malden River ecosystem, including the potential replication of lost wetland habitat and the identification of areas that will or may potentially support productive wetland vegetation and/or restoration of degraded wetland habitat. Unless otherwise provided pursuant to Appendix I, Exelon Mystic shall spend to implement this SEP a total of \$118,600 to fund the Study, and to purchase certain water monitoring equipment. The Study shall build on preliminary data collection and other work being performed in a study overseen by the Army Corps of Engineers and the Mystic Valley Development Commission. The SEP shall be completed as quickly as practicable, but by no later than December 2005.

2. Work Schedule. The SEP shall be performed on the following schedule:

- (a) By no later than June 1, 2004, the contract for performing the Study shall be awarded.
- (b) By no later than December 1, 2004, the Study tasks shall be completed.
- (c) By no later than June 1, 2005, a draft Study report shall be produced.
- (d) By no later than December 1, 2005, the final Study report shall be produced.

3. Expenditure Schedule. By February 1, 2004, or within ten (10) days of final entry of this Consent Decree, whichever is later, Exelon Mystic shall spend in accordance with Paragraph 3 of Appendix I a total of \$118,600 to implement this SEP. Specifically, Exelon Mystic shall spend approximately \$118,300 to fund the Study, and the remainder to purchase certain water monitoring equipment to be deployed in the Malden River.

4. Critical Milestones. The following is the critical milestone for this SEP: By no later than December 1, 2005, the final report for the Study shall be produced.